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DNA Shall Prevail: Postconviction DNA Evidence: An Annotated Bibliography

Deborah Sulzbach

ABSTRACT. This annotated bibliography is presented as a guide for attorneys, librarians, students, and the general public interested in post-conviction DNA evidence. Part I presents a brief introduction to the history and use of postconviction DNA evidence. Part II includes articles about individuals exonerated through the use of postconviction DNA evidence. Part III presents articles focusing on postconviction DNA evidence in various states. Part IV contains articles about the federal Innocence Protection Act. Part V includes articles about some Innocence Projects in the United States. Part VI includes articles covering various aspects of postconviction DNA evidence. Part VII lists books and chapters of books on the topic. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2006 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. Postconviction DNA evidence, DNA testing, Innocence Protection Act, Innocence Projects, postconviction DNA testing

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The author wishes to thank Julie Thomas, Technical Services Librarian at Drake University Law Library, for her assistance in the preparation of this article. The author also wishes to thank her brothers, Richard, David, and Daniel Sulzbach for their advice and support.

Legal Reference Services Quarterly, Vol. 25(1) 2006
Available online at <http://www.haworthpress.com/web/LRSQ>
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doi:10.1300/J113v25n01_03

I. INTRODUCTION

"It is better to risk saving a guilty person than to condemn an innocent one."¹ Since 1989, 156² American inmates have been exonerated using postconviction DNA testing. Prior to DNA's discovery in 1985, innocent individuals were convicted of crimes due to a variety of reasons including inaccurate eyewitness testimony, shoddy police work, and coerced confessions. Until recently, it was impossible to identify definitively the wrongly convicted. With the introduction of DNA testing as a forensic tool, the number of innocent people sent to prison has diminished. However, many innocent individuals convicted prior to its use in criminal cases have languished in prison with little hope of being freed. Postconviction DNA has given the wrongly convicted a second chance at life. Yet, postconviction DNA testing has proven to be a double-edged sword. While exonerating numerous wrongfully convicted individuals, it has also created many unsolved cases with the truly guilty remaining free. It has also revealed a seriously flawed American criminal justice system.

DNA genetically deciphers who we are and can uniquely identify different individuals. DNA, or DeoxyriboNucleic Acid, is a double-stranded spiral molecule found in the cells of all organisms, which contains the biological and genetic information that makes up an individual. DNA is found in spermatozoa, blood, saliva, skin, and hair. Its ability to provide unique identification now plays a vital role in criminal cases. However, prior to 1994,³ DNA testing was not widely available. The first use of DNA in a criminal case occurred shortly after Alec Jeffreys of Leicester University (England) first described the technique in 1985. In an immigration dispute, a Ghanaian boy seeking admission to the United Kingdom was identified as the son of a resident using DNA. The first American inmate exonerated using postconviction DNA testing was Gary Dotson in 1989. Dotson had been convicted of aggravated kidnapping and rape due to the victim's identification. After serving eight years, the conviction was vacated when the victim recanted her testimony and DNA testing conclusively proved that Dotson could not be the donor of the semen secretions found at the scene. Since then, exonerations have multiplied at a quickening pace, thanks to the continued use of postconviction DNA testing and the efforts of Innocence Projects.

There are now over forty states plus Canada, Australia, and the United Kingdom which have established Innocence Projects. The Innocence Projects handle cases in a variety of ways: some handling only cases which can yield proof of innocence through postconviction DNA test-

ing, like the Cooley Innocence Project; others work on any case where there appears to be a miscarriage of justice, whether DNA evidence is available or not, like the Wisconsin Innocence Project at the University of Wisconsin Law School. Many states have also created Innocence Commissions charged to look at some of the common causes of wrongful convictions and to recommend procedures to decrease the risk of incarcerating the innocent.

In response to the vast numbers of postconviction DNA exonerations, Senator Patrick Leahy (D-Vt.) introduced The Innocence Protection Act of 2001.⁴ The Act proposed basic reforms to the American criminal justice system ensuring protection of the wrongly convicted by making easier access to postconviction DNA testing, improving the quality of legal representation in capital cases, and offering financial compensation to the wrongly convicted. As of this date, the Act remains on the floor of Congress awaiting passage. However, in October 2004, President Bush signed into law the Justice for All Act 2004,⁵ incorporating many components of the Advancing Justice Through DNA Technology Act,⁶ which includes the Innocence Protection Act.

Some within the legal community believe the number of postconviction DNA exonerations will dwindle as the use of DNA evidence in criminal cases becomes routine. Meanwhile, that figure continues to rise and there are still 38 states and the federal government (both civilian and military courts) which authorize the death penalty for capital crimes.⁷ As long as people await execution on death row, is there not the chance that some may be innocent?

This annotated bibliography should serve as a starting point for attorneys, librarians, students and the general audience wanting information on DNA and postconviction DNA testing. Its aim is as a research tool, not a comprehensive listing of every article or book on postconviction DNA testing. Nevertheless, it should present a good start to the understanding of DNA and postconviction DNA testing.

II. PERSONAL STORIES

Beth Albright & Debbie Davis, *Guilty Until Proven Innocent: The Case of Herman Douglas May*, 30 N. Ky. L. Rev. 585 (2003).

The authors present a detailed look at the case of Kentucky State Penitentiary inmate Herman Douglas May, exonerated by postconviction DNA testing. The Kentucky Innocence Project and the latest DNA technology ensured May's release after 13 years. Suggestions for needed

criminal justice reforms, with the goal of aiding the wrongly convicted in their quest for postconviction DNA testing, are presented.

E. M. Freedman, *Earl Washington's Ordeal*, 29 Hofstra L. Rev. 1089 (2001).

Freedman, Earl Washington's attorney, presents a detailed and accurate retelling of Washington's legal ordeal. Convicted due to a coerced confession and shoddy police work, Washington came within days of execution before being exonerated by DNA evidence. An enthralling exposé of some of the phenomena, coerced confessions, ineffective counsel and racial prejudice, that lead to injustice in America's death penalty. A detailed timeline of Washington's ordeal is provided in an appendix.

Neil Miller, *Reflections of the Wrongly Convicted*, 35 New Eng. L. Rev. 615 (2001).

Convicted due to coerced eyewitness testimony and inadequate counsel, the author served ten years in prison for rape before being exonerated with the assistance of the Cardozo Innocence Project. Miller recounts his criminal justice system ordeal and his life as an innocent inmate. He implores newly degreed lawyers to handle inmates with compassion and sympathy.

III. STATE SPECIFIC ARTICLES

Catherine Arcabascio, *Freeing the Innocent: Obtaining Post-Conviction DNA Testing in Florida*, 28 Nova L. Rev. 61 (2003-2004).

Arcabascio, co-founder and co-director of the Florida Innocence Project, compares Section 925.11 of the Florida Statutes with its procedural counterpart Rule 3.853 of the Florida Rules of Criminal Procedure. Both set forth requirements to be met for postconviction DNA testing. However, since Rule 3.853 is more expansive and dictates the structure of a motion, the author presents further analysis of that Rule.

Donna Duchholz, Student Author, *Modern Day Chateau D'If in Florida? Collecting Dust on the Shelves of Justice: Potentially Exculpatory DNA Evidence Waits for a Turn in the Florida Sunshine*, 30 Stetson L. Rev. 391 (2000-2001).

Florida's postconviction relief law, Rule 3.850, and its limitations, are discussed in this article. Adopted at the inception of the DNA revo-

lution, the outdated rule is useless to today's innocent defendants requesting postconviction DNA testing. The author recommends the adoption of supplemental language to the rule which would encompass all scientific advances in the future.

Kelly Field, *Illinois Death Row Release Stirs Hill Debate on Scope of Post-Conviction DNA Testing*, 61 CQ Weekly (1/25/2003).

Blanket death sentence commutations by Illinois Governor George Ryan renewed Congressional debate on the passing of the Innocence Protection Act. The Act guarantees death row inmates' access to DNA evidence and provides grants to states for DNA testing programs. Field hopes renewed discussion on wrongful convictions will lead to passage of the bill, which is imperative in ensuring the release of innocent inmates.

Keith A. Findley, *New Laws Reflect the Power and Potential of DNA*, Wis. Law (May 2002).

Findley, co-founder and co-director of the Remington Center's Innocence Project, presents a detailed look at Wisconsin's postconviction statute, Wis. Stat. section 974.07. The 2001 legislation guarantees a postconviction right to discovery and a right to seek postconviction relief. Recommendations for the preservation of DNA evidence and the elimination of time limits are also discussed.

Andrew Good, *Litigating for Access Samples and Funding in Cases in Which DNA Results Will Be Probative, But Not Dispositive of Innocence*, 35 New Eng. L. Rev. 649 (2000-2001).

Good, a member of the Massachusetts Supreme Court's Judicial Advisory Committee on the Rules of Criminal Procedure, discusses a proposed amendment to the state's trial motion rule. Known as the Indigent Defense Issue, this amendment would add new language permitting court discretion in the granting of funds for new trials. Money would be earmarked for postconviction DNA testing and non-counsel services for the wrongly convicted.

Elizabeth V. LaFollette, Student Author, *State v. Hunt and Exculpatory DNA Evidence: When Is a New Trial Warranted?* 74 N.C. L. Rev. 1295 (1995-1996).

LaFollette analyzes the 1995 North Carolina case which first addressed the issue of whether newly discovered DNA evidence justified a new

trial. The North Carolina Supreme Court's decision in *State v. Hunt* and its ramifications upon new trial jurisprudence are covered. The author also presents a detailed comparison of states' statutes which deal with exculpatory DNA evidence.

Gregory W. O'Reilly, *A Second Chance for Justice: Illinois' Post-Trial Forensic Testing Law*, 81 *Judicature* 114 (1997).

O'Reilly, criminal justice counsel in the Cook County, Illinois, Public Defender Office, was instrumental in drafting the post-trial forensic testing bill discussed in this article. Signed into law in 1997, the statute allows wrongly convicted inmates access to postconviction DNA and fingerprint testing, if it was unavailable at the time of trial. The legislature applies new technology to examine old evidence.

David Weeks, *Post-Conviction DNA Testings: More Questions than Answers*, 65 *Tex. Bar J.* (2002).

A detailed look at Texas Senate Bill 3, enacted in April 2001, allowing inmates the right to request DNA testing of biological evidence in the state's possession. At odds with the Bill is Chapter 64 of the Code of Criminal Procedure, listing criteria to be met before evidence can be released for testing. Chapter 64 specifies that evidence must exist in a testable condition, testing was not available at the time of trial, and evidence must be proven untampered with. Due to the discrepancies between the two items, Texas courts are in the process of deciding the constitutionality of the Bill.

IV. INNOCENCE PROTECTION ACT

Rochelle L. Haller, Student Author, *Innocence Protection Act: Why Federal Measures Requiring Post-Conviction DNA Testing and Preservation of Evidence Are Needed in Order to Reduce the Risk of Wrongful Executions, Personal Genetic Information: Implications for the Workplace and Criminal Justice*, 18 *N.Y.L. Sch. J. Hum. Rights* 101 (2001).

Due to time restraints, many requests for postconviction DNA testing are denied. State prosecutors often will not release evidence until litigation is threatened or initiated. To rectify this situation, Haller calls for the passing of the Innocence Protection Act of 2001. Included in this ar-

ticle is a detailed look at the Act, its ramifications on state law, and similar legislation in New York, Illinois, and California.

Patrick Leahy, *Innocence Protection Act of 2001*, 29 *Hofstra L. Rev.* 1113 (2000-2001).

The full text of the Innocence Protection Act of 2001 and Senator Leahy's accompanying remarks to Congress are presented in this article. Leahy details each section of the Act and its provisions, and makes a convincing case for passage of the legislation. The Act proposes basic reforms to the American criminal justice system ensuring protection of the wrongly convicted.

Jennifer L. Weiers & Marc R. Shapiro, Student Authors, *The Innocence Protection Act: A Revised Proposal for Capital Punishment Reform*, 6 *N.Y.U. J. Legis. & Pub. Policy* 615 (2002-2003).

A detailed look at the Innocence Protection Act and its various provisions is presented. The Act guarantees competent legal representation and postconviction DNA testing for the innocent. The authors believe passage of the bill, originally introduced in 2001, is ensured in 2002-2003 due to citizens' awareness of the increased number of exonerations and dissatisfaction with the American criminal justice system. (As of September 2004, the bill awaits action on the Senate floor.)

L. Yackle, *Congressional Power to Require DNA Testing*, 29 *Hofstra L. Rev.* 1173 (2000-2001).

The author presents an in depth look at Section 104 of the Innocence Protection Act of 2001. This Section proposes a statute mandating states to consent to DNA testing for all inmates if exoneration can be guaranteed. In this article, Yackle defends the constitutionality of Section 104, which has been accused of being at odds with the Due Process Clause of the Fourteenth Amendment.

V. INNOCENCE PROJECTS

D. Molvig, *DNA Evidence: Freeing the Innocent*, 29 *Wis. Law.* 14 (2001).

An in depth look at the University of Wisconsin's Innocence Project and their first defendant, Christopher Ochoa, serving time for rape and

murder. Despite confessing to the crime to avoid the death penalty, Mr. Ochoa convinced The Project to take on his case. DNA testing, not available at the time of his conviction, exonerated Mr. Ochoa. Although DNA testing has proven to be a useful tool in the exoneration of wrongfully convicted individuals, the author maintains that a system that convicts the innocent in the first place must be reformed.

N. Stecker, *Cooley's Challenge: Innocence Project Teams Students with Lawyers to Free the Wrongfully Convicted*, 80 Mich. Bar J. 26 (2001).

Addressing the growing number of postconviction DNA exonerations, the Thomas M. Cooley Law School's innocence project began in 2001. Unlike most innocence projects with salaried litigators on staff, Cooley law students put together, research and develop cases, passing them on to a panel of Michigan's best practitioners. The author presents a detailed account of the inner workings of Cooley's innocence project.

VI. MISCELLANEOUS ARTICLES

J. Brent Alldredge, Student Author, *Federal Habeas Corpus and Postconviction Claims of Actual Innocence Based on DNA Evidence*, 56 S.M.U. L. Rev. 1005 (2003).

This article addresses factors which allow innocent inmates to remain in prison despite the recognition of DNA testing as a valid exoneration option. Petitioners for access to postconviction testing often confront constitutional safeguards, which make reversal of guilty verdicts nearly impossible. The author recommends adoption of the Innocence Protection Act to ensure new evidence will be equally recognized throughout every jurisdiction.

Arleen Anderson, *Responding to the Challenge of Actual Innocence Claims After Herrera v. Collins*, 71 Temp. L. Rev. 489 (1998).

Anderson, an attorney with the Cook County Illinois State Attorney's Office, takes a detailed look at the U.S. Supreme Court decision in *Herrera v. Collins*. That decision, which found that it is constitutional to execute an innocent person as long as they had a fair trial, has proven to be a challenge at both the federal and state levels when dealing with

postconviction claims of innocence. The author provides guidelines for ensuring that a prisoner claiming innocence has access to DNA testing.

Jean Coleman Blackerby, Student Author, *Life After Death Row: Preventing Wrongful Capital Convictions and Restoring Innocence After Exoneration*, 56 Vand. L. Rev. 1179 (2003).

Many exonerated individuals are released into the world ill-equipped to readjust to normal life. Most states have statutes offering the wrongly convicted recourse to restitution; however, these statutes vary dramatically. Blackerby recommends the adoption of a national law to provide monetary compensation and reentry assistance, including assistance in finding housing and employment, to restore the exonerated to their preconviction position in society.

J. Boemer, Student Author, *In the Interest of Justice: Granting Post-Conviction Deoxyribonucleic Acid (DNA) Testing to Inmates*, 27 Wm. Mitchell L. Rev. 1971 (2001).

Boemer presents a detailed history of DNA analysis, recounts its first use in an American criminal case and discusses the various steps being taken to provide postconviction DNA testing to a defendant. The author also discusses Minnesota's handling of postconviction DNA testing requests, which are rare, since it is not a death penalty state.

Diana Borteck, Student Author, *Pleas for DNA Testing: Why Lawmakers Should Amend State Post-Conviction DNA Testing Statutes to Apply to Prisoners Who Pled Guilty*, 25 Cardozo L. Rev. 1429 (2004).

With thirty-two states having enacted postconviction DNA statutes, the wrongly convicted have greater access to postconviction testing. However, due to an identity at issue requirement in many state statutes, false plea-bargainers' and false confessors' requests for testing are being denied. The author recommends the elimination of identity at issue requirements from all state statutes, thereby ensuring equal access to postconviction evidence for all wrongly convicted individuals.

K. E. Christian, Student Author, *And the DNA Shall Set You Free: Surrounding Postconviction DNA Evidence and the Pursuit of Innocence*, 62 Ohio St. L.J. 1195 (2001).

The author advocates amending state statutes to help ensure consistent outcomes when a defendant's innocence is proven as a result of

postconviction DNA testing regardless of the jurisdiction involved. Different state exculpatory DNA standards allow some defendants' convictions to be reversed while others remain languishing in the prison system. While many within the criminal justice system support the principle of finality, the author maintains that fairness for those who have been wrongfully convicted must be foremost within the courts. She recommends the adoption of federal legislation that guarantees all inmates equal access to DNA testing.

D. DeFoore, Student Author, *Postconviction DNA Testing: A Cry for Justice From the Wrongly Convicted*, 33 Tex. Tech. L. Rev. 491 (2002).

Although DNA evidence is admissible in federal and most state courts, many are at a loss on how to deal with postconviction DNA requests. DeFoore presents guidelines for states addressing this issue, such as recommendations for the preservation of trace evidence, the lifting of time limitations, and making testing available to all claiming innocence. She further details the lengths Congress has taken to get the Innocence Protection Act passed.

Developments in the Law: Confronting the New Challenges of Scientific Evidence, 108 Harv. L. Rev. 1481 (1994-1995).

One of the earliest discussions of exculpatory postconviction DNA testing, this article offers guidelines for interpreting the newly recognized scientific evidence. Courts deal with motions for new trials, postconviction preservation, and newly discovered evidence in a discretionary manner. Recommended guidelines would ensure uniformity across jurisdictions in handling these issues. The article provides an interesting look at the inception of postconviction DNA testing.

Ronald Earle & Carl Bryan Case, Jr., *Prosecutorial Mandate: See That Justice is Done*, 86 Judicature 69 (2002).

The authors, both with the Travis County (Texas) District Attorney's Office, examine three cases in which postconviction DNA testing exonerated inmates who were incarcerated due to coerced confessions or inaccurate eyewitness testimony. The authors stress that it is up to the prosecutors in criminal cases to guarantee that every means is taken to ensure that innocent people are not sent to prison.

Keith A. Findley, *Learning from Our Mistakes: A Criminal Justice Commission to Study Wrongful Convictions*, 38 Cal. W. L. Rev. 333 (2002).

Findley, co-director of the Wisconsin Innocence Project, recommends the appointment of a United States committee to review postconviction exoneration cases. Canadian and Great Britain commissions, established to investigate possible injustices, are studied in detail and are recommended as models for an American commission. The author stresses the importance of a commission to study our flawed criminal justice system, which allows innocent inmates to languish in prison.

Marjory Fisher, *Procedural Issues Surrounding Post-Conviction DNA Testing*, 35 New Eng. L. Rev. 621 (2000-2001).

Fisher, Chief of the Special Victims Bureau in Queens County, New York, discusses the value of DNA testing in the criminal justice system. Her office, which prosecutes child abuse and sex crimes cases, has used DNA in both the conviction and exoneration of defendants. DNA has played an important role in cases her office has tried, especially in John Doe cases, where the statute of limitations is about to expire.

M. Franceschelli, Student Author, *Motions for Postconviction DNA Testing: Determining the Standard of Proof Necessary in Granting Requests*, 31 Cap. U. L. Rev. 243 (2003).

Each state decides standards for granting postconviction DNA testing within their courts. Disparate handling of requests led to the formation of the National Commission on the Future of DNA Evidence whose recommendations evolved into the Innocence Protection Act. The author recommends that all states adopt the language contained within the Act to ensure uniformity in the handling of postconviction DNA testing requests regardless of jurisdiction.

Mark Hanson, *DNA Bill of Rights*, 86 ABA J. 30 (2000).

The author advocates adoption of a DNA Bill of Rights mandating inmates' absolute right to postconviction testing regardless of jurisdiction. Due to inconsistency among states' statutes, half of all cases handled by innocence projects must go to court to gain access to evidence for DNA testing. The Bill would require standards for testing and evi-

dence preservation, ensuring consistency in the handling of every prisoner's case regardless of locale.

C. Ronald Huff, *Wrongful Conviction and Public Policy: The American Society of Criminology 2001 Presidential Address*, 40 *Criminology* 1 (2002).

Postconviction DNA exonerations and moratoriums on the death penalty have exposed many of the fallibilities of the criminal justice system. Utilizing survey data which determined the public's perception of the system, Huff concludes that many of the decisions made by courts are met with skepticism. The author presents eight recommendations for restoring faith in a badly flawed system.

Diana L. Kanon, *Will the Truth Set Them Free? No But the Lab Might: Statutory Responses to Advancements in DNA Technology*, 44 *Ariz. L. Rev.* 467 (2002).

Kanon looks at states which have enacted statutes dealing with postconviction DNA testing. She presents a detailed look at Illinois and New York's statutes which served as models for other jurisdictions. Arizona's newly enacted statute is also scrutinized. Despite inherent weaknesses as written, Arizona's statute shows a willingness to recognize DNA evidence as a viable tool in freeing the innocent.

Seth F. Kreimer & David Rudovsky, *Double Helix, Double Bind: Factual Innocence and Postconviction DNA Testing*, 151 *U. Pa. L. Rev.* 547 (2002).

Legal difficulties encountered by inmates when requesting postconviction DNA testing are discussed in this article. The authors, both at the University of Pennsylvania Law School, cite reluctance of prosecutors, difficult access to courts, and states' unwillingness to release evidence as factors hindering inmates. If postconviction DNA testing could conclusively demonstrate innocence, then access to evidence must be constitutionally mandated.

Mark Lee, *The Impact of DNA Technology on the Prosecutor: Handling Motions for Post-Conviction Relief*, 35 *New Eng. L. Rev.* 663 (2000-2001).

Assistant District Attorney Lee addresses the impact that requests for postconviction DNA testing have had on his Suffolk County Office.

With the increasing use of DNA technology, Lee offers guidelines for building solid cases and therefore aiding in the elimination of motions for new trials. This article gives insight from both a government and prosecutor's perspective.

Micah A. Luftig & Stephen Richey, *DNA and Forensic Science*, 35 *New Eng. L. Rev.* 609 (2000-2001).

A concise overview of DNA technology and its application to forensic testing is covered in this brief article. The authors present a detailed examination of different forms of DNA testing, Restriction Fragment Length Polymorphisms (RFLP), Polymerase Chain Reaction (PCR), and mitochondrial DNA (mtDNA) sequencing. The article provides a good historical introduction to the evolution of DNA testing for individuals needing a comprehensive explanation.

Charles I. Lugosi, *Punishing the Factually Innocent: DNA, Habeas Corpus and Justice*, 12 *Geo. Mason U. Civ. Rights L. Rev.* 233 (2002).

Lugosi recommends DNA testing be available to any petitioner claiming innocence. The ever-growing number of postconviction exonerations should mandate a review of all cases where identity is an issue. A criminal justice system that has killed factually innocent individuals must be reformed to ensure only the guilty are executed. Until society can be assured that the innocent are not being executed, there must be a national moratorium on the death penalty.

Anne-Marie Moyes, *Assessing the Risk of Executing the Innocent: A Case for Allowing Access to Physical Evidence for Posthumous DNA Testing*, 55 *Vand. L. Rev.* 953 (2002).

This article posits the amending of state legislation to allow public access to physical evidence for post-execution DNA testing. Both state governments and judges have stonewalled requests made under the Freedom of Information Act. Parties with a vested interest in closed cases are loath to provide information, citing the need for finality and the possible disclosure of fallibility within the criminal justice system. The addition of a proviso to states' freedom of information acts allowing post-execution access to DNA evidence in the state's possession is imperative.

Peter Neufeld, *Legal and Ethical Implications of Post-Conviction DNA Exonerations*, 35 New Eng. L. Rev. 639 (2000-2001).

Forensic DNA testing has had far-reaching effects upon the criminal justice system. The subjectivity of eyewitness identification has been replaced with an exact science that alleviates all evidentiary doubts. Because of the increasing numbers of postconviction DNA exonerations, Neufeld, Co-Director of the Benjamin N. Cardozo School of Law Innocence Project, recommends a review process to examine the flaws in the American criminal justice system, a system that has erroneously convicted innocent individuals.

Peter Neufeld, *Preventing the Execution of the Innocent: Testimony Before the House Judiciary Committee*, 29 Hofstra L. Rev. 1155 (2000-2001).

Neufeld, Co-Director of the Benjamin N. Cardozo School of Law Innocence Project, testified in front of the House Committee on the Judiciary in June 2000. His statement, presented here in full, suggests guidelines for the use of exculpatory DNA testing. The recommendations include access to postconviction DNA testing for all inmates, funding for competent counsel, and the elimination of time limitations.

J. T. Rago, *Truth or Consequences and Post-Conviction DNA Testing: Have You Reached Your Verdict?* 107 Dick. L. Rev. 845 (2003).

The continued exoneration of individuals by postconviction DNA evidence has cast an ominous shadow over the American criminal justice system. With the proven accuracy of DNA testing, the author calls for the continued and widespread use of it to prevent innocent people from being sent to prison. The article also presents a detailed retelling of Kirk Bloodworth's story, the first man convicted of murder exonerated by postconviction DNA evidence in the United States.

Michael J. Saks et al., *Toward a Model Act for Prevention and Remedy of Erroneous Convictions*, 35 New Eng. L. Rev. 669 (2000-2001).

Saks and his coauthors, participants in a seminar offered by Arizona State University Law School, constructed a Model Act which offered recommendations for the reform of the American criminal justice system. Postconviction DNA exonerations have identified patterns of errors in cases and focused attention on a badly flawed system. The Model Act sets out policies for reducing the number of erroneous convictions.

Karen A. Saunders, Student Author, *Harvey v. Horan: Prisoners Should Have a Post-Conviction Constitutional Right under 42 U.S.C. Section 1983 to Access Evidence for DNA Testing*, 30 N. Ky. L. Rev. 625 (2003).

Saunders argues that the U.S. Court of Appeals for the Fourth Circuit incorrectly interpreted *Harvey v. Horan*, failing to take into consideration 42 U.S.C. Section 1983, which recognizes a petitioner's constitutional right to postconviction DNA evidence. Differing state statutes hinder some inmates' rights to postconviction testing. The author recommends that the U.S. Supreme Court overturn *Harvey v. Horan*, thus ensuring every petitioner equal access to the evidence from their case.

Holly Schaffter, Student Author, *Postconviction DNA Evidence: A 500 Pound Gorilla in State Courts*, 50 Drake L. Rev. 695 (2002).

Prisoners requesting postconviction DNA testing face many challenges in state courts. Traditional postconviction remedies, such as time limitations, restrict a prisoner's access to evidence from their trial. Schaffter discusses three approaches prisoners rely upon when met with legislative roadblocks. She also recommends the adoption of legislation that would allow prisoners access to postconviction DNA testing, a hearing, and a new trial, if warranted, regardless of jurisdiction.

Barry Scheck, *Preventing the Execution of the Innocent: Testimony Before the House Judiciary Committee*, 29 Hofstra L. Rev. 1165 (2000-2001).

Scheck, Co-Director of the Benjamin N. Cardozo School of Law Innocence Project, testified in front of the House Committee on the Judiciary in June 2000. His statement, presented here in full, suggests guidelines for the use of exculpatory DNA testing. The recommendations include access to postconviction DNA testing for all inmates, funding for competent counsel, and the elimination of time limitations.

Kathy Swedlow, *Don't Believe Everything You Read: A Review of Modern "Post-Conviction" DNA Testing Statutes*, 38 Cal. W. L. Rev. 355 (2002).

Many state statutes allowing convicted inmates access to DNA testing are incompatible with long-established postconviction remedies because of their more restrictive language. To ensure a petitioner's rights

are fully protected, at this time familiarity with both state and federal law is vital. Swedlow, Deputy Director of the Thomas M. Cooley Innocence Project, recommends guidelines for remedying this inequity by the expansion of the confining language of state statutes, thereby guaranteeing petitioners in every jurisdiction equal opportunity to post-conviction testing.

Kathy Swedlow, *State by State Review of "Post-Conviction DNA Testing" Statutes*, 1 Online J. of J. Stud. 1 (Jan. 2003) <<http://www.ojjs.icaap.org/issues/1.1/swedlow.html>>.

This article by Swedlow, Deputy Director of the Thomas M. Cooley Innocence Project, is essentially a rehash of recommendations set forth in her article "Don't Believe Everything You Read: A Review of Modern 'Post-Conviction DNA Testing Statutes,'" published in the California Western Law Review in 2002. She recommends the expansion of the confining language of many state statutes, thereby guaranteeing petitioners in every jurisdiction equal opportunity to postconviction testing.

Penny J. White, *Newly Available, Not Newly Discovered*, 2 J. App. Prac. & Proc. 7 (2000).

The author argues that strict time limitations on filing motions for new trials need to be re-examined as DNA testing becomes more sophisticated. Appellate courts, at the forefront of judicial decisions, must decide how to deal with the newly available DNA evidence. Strict proof requirements, suitable at the inception of newly discovered scientific evidence, need to be readdressed as DNA technology continues to become more exact.

VII. BOOKS

Stanley Cohen, *The Wrong Men: America's Epidemic of Wrongful Death Row Convictions* (Carroll & Graf 2003).

A compilation of brief vignettes, Cohen presents the stories of 102 wrongly convicted Americans exonerated from death row. Incarcerated due to false confessions, shoddy police work, or inaccurate eyewitness testimony, the book emphasizes the role postconviction DNA evidence played in the release of these individuals. These stories reveal the inep-

titude of the American criminal justice system and its willingness to condemn individuals to death row. Nevertheless, the stories also admirably portray the dedicated few seeking justice for the wrongly incarcerated.

Edward Connors, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial* (National Institute of Justice, June 1996).

Commissioned by then Attorney General Janet Reno, this study was in response to the extraordinary number of postconviction DNA exonerations. Essays authored by experts such as Edward Imwinkelried and Barry Scheck discuss DNA evidence and its ramifications upon the judicial system. Detailed profiles of 28 individuals exonerated through postconviction DNA testing are also presented.

DNA and the Criminal Justice System: The Technology of Justice (David Lazer ed., MIT Press 2004).

A collection of essays by renowned authors including Justice Stephen Breyer and Edward Imwinkelried, each chapter covers an aspect of the effect of DNA testing on the American criminal justice system. From DNA databases to postconviction access for the wrongly convicted, the societal repercussions of genetic technology are discussed. Although the criminal justice system expounds the premise of finality, this book establishes DNA as the one exception to the rule.

Jim Dwyer, Peter Neufeld & Barry Scheck, *Actual Innocence: When Justice Goes Wrong and How to Make It Right* (New American Library 2003).

The authors chronicle ten cases of the wrongly convicted and the incredible efforts undertaken by the Cardozo Law School Innocence Project to exonerate them. Incompetent legal counsel, coerced confessions, sloppy police work, and mistaken identity are sources of the erroneous convictions. Each individual's trial, the events leading up to the trials, and the extraordinary endeavors undertaken to obtain the exonerations are presented. While this book presents a truly disturbing example of all that can go wrong within the American criminal justice system, it also reminds us of the efforts of a diligent few devoted to righting these miscarriages of justice.

Lawrence Koblinsky, Thomas F. Liotti & Jamel Oeser-Sweat, *DNA: Forensic and Legal Applications*, Ch. 7 (Wiley-Interscience 2005).

Chapter 7, Exonerating the Innocent through DNA, provides a detailed analysis of the role postconviction DNA evidence plays in freeing the wrongly convicted. The authors stress the importance of DNA testing in the exoneration process and present guidelines for the post-conviction appeals process, from filing the motion to relevant testing statutes. A clear and straightforward presentation of the use of DNA testing in the exoneration process, this chapter will appeal to not only the novice but also those well versed in the topic.

Henry C. Lee & Frank Tirnady, *Blood Evidence: How DNA Is Revolutionizing the Way We Solve Crimes* (Perseus 2003).

Renowned forensic expert Henry Lee and co-author Tirnady detail several high profile cases and the important role DNA technology played in each of these cases. From the exoneration of the wrongly convicted to the identification of human remains, DNA fingerprinting plays a pivotal role in both civil and criminal cases. The future of forensic DNA evidence and an extensive discussion of the O. J. Simpson murder case, in which Lee played a pivotal role, are also presented.

National Commission on the Future of DNA Evidence, *Post-Conviction DNA Testing: Recommendations for Handling Requests* (National Institute of Justice, September 1999).

At the request of then Attorney General Janet Reno, the National Commission on the Future of DNA Evidence was created in response to the rapidly evolving science of DNA. This book by the Commission makes recommendations for prosecutors, defense attorneys, laboratory personnel, the judiciary and victims on the optimal use of DNA evidence within the criminal justice system.

Louis J. Palmer, Jr., *Encyclopedia of DNA and the United States Criminal Justice System* (McFarland, 2004).

A comprehensive compilation of pieces focusing on DNA and the American criminal justice system, this alphabetic encyclopedia includes federal and state DNA statutes, definitive listings of organiza-

tions exonerating the wrongly convicted plus brief biographies of the exonerated. Important cases, case law and relevant statutes are also cited. This clearly written encyclopedia, which covers not only legal but also scientific aspects of DNA, should be of interest to anyone seeking relevant information on this important topic.

Norah Rudin & Keith Inman, *An Introduction to Forensic DNA Analysis* (2d ed., CRC Press 2002).

Rudin and Inman, forensic DNA consultants, cover the basic principles of DNA technology, from its structure to the future of forensic DNA analysis. Also presented are landmark cases, including exoneration, that were decided with the assistance of DNA. The clearly written book and the detailed appendices, which include a glossary of related terms, DNA Advisory Board recommendations, and relevant decisions in United States Courts, should be useful to anyone wanting germane information on the topic of DNA.

Gina Smith, *The Genomics Age: How DNA Technology Is Transforming the Way We Live and Who We Are*, Ch. 4 (AMACOM 2005).

The wide-ranging uses of forensic DNA, from the exoneration of the wrongly convicted to the identification of the remains of the Romanovs, are covered in this chapter. Examples of the usage of DNA technology in high profile cases, such as the Boston Strangler and Sam Shepard, are also presented. A clear and uncomplicated introduction to the technology, this chapter should appeal to the general reader wanting a detailed explanation of DNA without the complex scientific terminology.

James D. Watson, *DNA: The Secret of Life*, Ch. 10 (Knopf 2003).

In chapter ten, Watson, co-discoverer of the structure of DNA, expounds on the important role DNA technology plays in today's legal system, from the exoneration of innocent individuals to the identification of those incinerated in the World Trade Center disaster. Clear explanations of DNA processes and emerging technologies that should appeal to the general reader are presented. As an expert in the field of genetics, Watson provides an authoritative insight into the field of forensic DNA and today's law.

ENDNOTES

1. Voltaire.
2. Benjamin N. Cardozo School of Law Innocence Project, Innocence Project <<http://innocenceproject.org>> (last updated Mar. 10, 2005).
3. S486 section 101 (a) (3).
4. S486/HR912.
5. HR5107.
6. HR 3214/S1700.
7. see Victor L. Streib, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes*, January 1, 1973-March 15, 2004 at p. 7.

Received: 08/25/05

Revised and Accepted: 08/16/05



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